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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER SMALLEY, JAMES N	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/736,383

Applicant(s)

NOMULA, SRINIVAS

Examiner

James N. Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 22-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/15/03; 5/31/05</u> . | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21, drawn to the apparatus of the overcap/container, classified in class 215, subclass 347.
- II. Claims 22-31, drawn to a method of manufacturing an overcap, classified in class 264, subclass 478.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the drying agent could be placed into the cap instead of by thermoforming or injection molding, as required by the method claims. Also, the method claims do not require forming a connecting portion.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

5. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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6. During a telephone conversation with Donald Hill, Jr. on 26 May 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-31 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 9-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brunk US 6,986,807.

Brunk '807 teaches, in the embodiment of figure 6, a desiccant disk (28) secured on the inner surface of a closure lid.

8. Claims 1, 8-10, 12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cullen et al. US 3,918,578.

Cullen '578 teaches a closure with a desiccant (30) secured to the lid undersurface by adhesive means as taught in column 3, lines 29-32.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 2-4, 11, 15-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunk US 6,986,807 in view of Hekal US 6,124,006.

Brunk '807 fails to teach the drying agent comprising a polymer.

Hekal '006 teaches various embodiments of a desiccant polymer disc (20) taught for use in regulating a container's atmospheric moisture.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the disk of Brunk '807 of a desiccant polymer disc as taught to be known for use in containers by Hekal '006. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Hekal '006 further discloses embodiments of the polymer containing EVOH, which is a known oxygen scavenger.

10. Claims 5, 7, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunk US 6,986,807 in view of Schenck et al. 2003/0222046.

Brunk '807 fails to teach multiple drying agent layers or a barrier layer positioned between the drying agent layer and the top portion of the cap. Instead, the reference merely discloses a cardboard cap liner.

Schenck '046 teaches closure cap liner (5) formed of a barrier layer material EVOH. Examiner notes EVOH is known to have some moisture-absorbent properties, thus comprising the "multiple drying agent layers" of claim 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Brunk '807, forming the liner of EVOH as taught to be known by Schenck '046, motivated by the benefit of providing a barrier layer over the container opening in order to seal the container and prevent oxidization of the container contents. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunk US 6,986,807 in view of Riemenschneider et al. US 6,571,942.

Brunk '807 fails to teach the drying agent layer disposed between the lid top surface and a polymer layer.

Riemenschneider '942 teaches a plug for sealing containers and further discloses a polymer layer (25) through which moisture must pass to reach desiccant (24). The polymer also serves as a means for retaining the desiccant within the cap.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of Brunk '807, providing a polymer layer so that the desiccant is between the polymer layer and the lid top surface, as taught to be known by Riemenschneider '942, because such is an equivalent means for securing the desiccant against the lid surface.

12. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunk US 6,986,807 in view of Drummond et al. US 6,881,286.

Brunk '807 fails to teach the container being a paperboard container with a rolled outer edge.

Drummond '286 teaches it is known to provide snap lids for securing to paperboard containers by snapping onto the rolled outer edge, and sealing the interior with a sealing layer.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the sealing arrangement of Brunk '807 to the lid of Drummond '286, motivated by the benefit of sealing the paperboard container and providing drying means to absorb moisture in order to keep the contents fresh.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892 citing relevant references.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns



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**SUPERVISORY PATENT EXAMINER**